

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 13, 2001

**IN RE C.M.R., ET AL.**

**Appeal from the Juvenile Court for Dickson County**  
**No. 12-98-044-CC A. Andrew Jackson, Judge**

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**No.M2001-00638-COA-R3-JV - Filed February 7, 2002**

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This case involves the termination of parental rights regarding two children who were removed from Mother and Father's home by the Department of Children's Services in 1998 and placed in foster care. DCS filed a petition to terminate parental rights on August 15, 2000, on the grounds that parents had received a sentence of ten (10) years or more and the children were under the age of eight (8) at the time the sentence was imposed; that the parents had been sentenced to more than two (2) years for the severe abuse of one child; and that termination was in the best interest of the children. The trial court found that statutory grounds had been proved and that termination of parental rights was in the best interest of the children. Accordingly, the trial court terminated the parental rights of both Mother and Father. Because DCS has established grounds for termination and has established that termination is in the best interest of the children, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court**  
**Affirmed and Remanded**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and WILLIAM C. KOCH, JR., J., joined.

David D. Wolfe, Dickson, Tennessee, for the appellant, Tina S.

Jerry Smith, Dickson, Tennessee, for the appellant, Perry S.

Paul G. Summers, Attorney General and Reporter, Elizabeth C. Driver, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services.

**OPINION**

This case involves the termination of parental rights regarding two children who were removed from their home by the Department of Children's Services ("DCS") in 1998 and placed in foster care. DCS sought to terminate the parental rights of Tina S. ("Mother"), the biological mother

of both children: C.M.R., a girl born in 1992, and J.M.S., a girl born in 1998. DCS also sought to terminate the parental rights of Perry S. (“Father”), who is the biological father of only the younger child, J.M.S. DCS also petitioned to terminate the rights of Christopher R., the biological father of C.M.R.<sup>1</sup>

## I. Facts

On December 14, 1998, DCS filed a petition for temporary custody of C.M.R. and J.M.S. after receiving a referral that then six-year old C.M.R. had been sexually abused. The Juvenile Court of Dickson County granted custody to DCS that day. Mother and Father were arrested and have apparently been incarcerated since their arrest.

After investigating the referral, DCS determined that C.M.R. had been sexually abused by Perry S., her Mother’s boyfriend, and that Mother was aware of the abuse and, in fact, participated by taking pictures of Perry S. and the child engaged in sexual acts. Upon removal from the home the children were placed together in a foster home. However, C.M.R. was moved to a different foster home in May of 1998.

Following the children’s removal from the home, both parents were criminally prosecuted. C.M.R. testified at the trial of Perry S., and he was found guilty by a jury of four counts of rape of a child and four counts of aggravated sexual battery. He received consecutive 25-year sentences for each count of rape and consecutive 12-year sentences for each count of aggravated sexual battery. Mother cooperated with law enforcement and produced evidence of the sexual abuse for the police.

Mother pled guilty to one count of sexual exploitation of a minor and two counts of aiding and abetting in the rape of a child. She received a two-year sentence on the sexual exploitation of a child count and 10-year sentences for each count of aiding and abetting in the rape of a child, to run concurrently at thirty percent. The earliest possible date on which Mother will be eligible for parole is sometime in 2002.

A Petition to Terminate Parental Rights was filed by DCS on August 15, 2000. The petition alleged several grounds for the termination, primarily relying on Tenn. Code Ann. §§ 36-1-113(g)(5) & 36-1-113(g)(6).<sup>2</sup>

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<sup>1</sup>The parental rights of Christopher Roach in regards to C.M.R. were also terminated in the proceedings below on the basis of abandonment. He has not appealed the decision of the trial court.

<sup>2</sup>DCS cited several other grounds for termination including that children were removed from the home for a period of more than six (6) months and parents had failed to comply in a substantial manner with the foster care plans and that awarding physical custody of the children to parents would pose a risk of substantial harm to the physical or psychological welfare of the children. At the termination hearing, however, DCS focused on parents’ convictions as the statutory grounds for termination.

A hearing on the petition for termination of parental rights was held in Dickson County Juvenile Court on December 6, 2000. DCS presented documentary evidence at the hearing consisting of the children's birth certificates and certified copies of the felony convictions of Mother and Father. Neither parent contested the fact of the criminal convictions.<sup>3</sup> Oral testimony was given by DCS case manager Hope Blevens and Mother. Father declined to testify.

At the hearing, the case manager testified that she first became involved in the case in response to a referral regarding the sexual abuse of C.M.R. by Perry S. She testified that the petition to terminate parental rights was brought because of the children's need for a safe environment, and due to the length of the sentences, neither Mother, the parent of both children, nor Father, the parent of one of the children, would be able to provide for the physical, psychological, and emotional needs of the children.<sup>4</sup> She testified that while there was actual sexual abuse against only C.M.R., there was concern that the abuse would also occur with J.M.S. as she grew older.

Mother testified on her own behalf at the hearing. Mother testified that even though she attended school through the 12th grade, she was in special education classes, and had an educational level of the third grade and the mind of a fourteen (14) year old. She stated that the only reason she engaged in the conduct for which she was convicted was out of fear of Perry S, who told her if she did not participate, he would kill her and take her children away. She assured the court that she would not allow such abuse in the future, that she loved her children, and that she is willing to attend counseling and parenting classes. She stated she was willing to do whatever would be required to retain her parental rights.

After hearing the evidence, the trial court terminated the parental rights of Mother and Father, stating from the bench:

Initially, I would like to say that the argument that the children—or, excuse me, that the parents have not had an opportunity to work some sort of a permanency plan is exactly the kind of situation that was contemplated by this particular statute, 36-1-113, Subsection 5. I would also like to point out these children have been in custody since December 14, 1998. That's just eight days short of two years. And in reading the statute, as to the child J.M.S., the statute said, the parent or parent—excuse me, parent or guardian has been sentenced to two or more years, that's here,

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<sup>3</sup> At the beginning of the trial, Perry S. moved the trial court to continue the case on the basis that he had filed a motion for a new trial in regard to his criminal convictions. DCS did not object to a continuance. The court denied the motion and proceeded with the hearing. This court has not been informed that the motion for a new criminal trial was granted.

<sup>4</sup> There was also testimony regarding the failure of the parents to comply with the permanency plan. DCS had alleged in its petition that the circumstances that led to the children's removal persisted and that the children had been removed from the home for more than six months and the parents had failed to comply in a substantial manner with the permanency plan. Although the case worker testified that parents had not complied with the counseling, therapy and drug treatment components of the plan, she acknowledged that the parents' confinement in prison would have made it impossible for them to comply with the requirements of the plan.

imprisonment for conduct against a child who is the subject of the petition or for conduct against a sibling or half sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian which has been found under any prior order of the Court or which is found by the Court hearing the petition to be severe child abuse as defined by 37-1-102(b)19, which exactly fits the situation here. These children have already been in custody for two years. Even under the very best of circumstances, [Mother] won't be out of – the mother won't be out of jail for another two years. And the State has met its burden for proceeding for termination under this statute. A lot has been said here today about the fundamental rights of parents to be parents. Children have the fundamental rights of being reared without being sexually abused. As far as I'm concerned, that right far exceeds any right of any parent any time, any where, under any circumstances. Based upon that, the State's petition to terminate is granted.

The trial court's order terminating the parental rights of both Mother and Father stated:

[Mother and Father] have committed severe child abuse as found by this court as well as the criminal court. Due to the abuse of one child and the imminent risk of harm to the other child, both children were removed from the home. Neither [Mother nor Father] are a fit and proper custodian of either child and they have committed severe abuse...Due to the abuse suffered at the hands of [Mother and Father]...placing custody of the children in either parent's legal and physical custody would pose a risk of substantial harm to the welfare of the children. These children were found to be dependent and neglected by this Court and was [sic] placed in the custody of the Department of Children's Services; the Department made reasonable efforts to prevent removal or the children's situation prevented reasonable efforts from being made prior to removal; . . . the continuation of the legal parent and child relationship greatly diminishes the children's chances of early integration into a stable and permanent home. [Mother and Father] are guilty of severe abuse of their children. They have both been sentenced to a term of more than 10 years and the children were under the age of 8 when the sentence was imposed. [Mother and Father] have been sentenced to more that [sic] 2 years for her severe abuse of C.M.R. pursuant to Tenn. Code Ann. § 36-1-113(g)(5). Awarding legal and physical custody of the children to either [Mother or Father] would pose a risk of substantial harm to the physical or psychological welfare of the children. It is in the best interest of the children and the public that all of the parental rights of [Mother and Father] to these children be forever terminated, and that the complete custody, control and guardianship of C.M.R. and J.M.S. be awarded to the State of Tennessee, Department of Children's Services, with the right to place them for adoption and to consent to such adoption *in loco parentis*. The Court finds by clear and convincing evidence that any and all

of the parental rights of [Mother and Father] should be terminated in regards to these children.<sup>5</sup>

Both Mother and Father appeal the trial court's termination of parental rights.

## II. Standard of Review

Because the decision to terminate parental rights affects fundamental constitutional rights, courts apply a higher standard of proof when adjudicating termination cases. *See O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995). To justify the termination of parental rights, the grounds for termination must be established by clear and convincing evidence. *See* Tenn. Code Ann. § 36-1-113(c)(1) (2001); *State Dep't of Human Servs. v. Defriece*, 937 S.W.2d 954, 960 (Tenn. Ct. App. 1996). Evidence which satisfies the clear and convincing standard "eliminates any serious or substantial doubt concerning the correctness of the conclusion to be drawn from the evidence." *O'Daniel*, 905 S.W.2d at 188. "This heightened standard...serves to prevent the unwarranted termination or interference with the biological parents' rights to their children." *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

Under this heightened standard of review, we must first review the trial court's findings in accordance with Tenn. R. App. P. 13(d). That review is *de novo*, with a presumption of correctness for the trial court's findings of fact, unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d). Then, we must determine whether the facts make out a clear and convincing case in favor of termination the parents' parental rights. *See In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1998).

Parental rights may be terminated in only a limited number of statutorily defined circumstances. Before termination, one or more of the asserted statutory grounds must be proven by clear and convincing evidence and the court must determine, also using the clear and convincing evidence standard, that termination is in the children's best interest. *See* Tenn. Code. Ann. § 31-1-113(c)(2).

## III. Statutory Grounds For Termination

The trial court based the termination of parental rights predominately on Tenn. Code Ann. §§ 36-1-113(g)(5) and 36-1-113(g)(6). Tenn. Code Ann. § 36-1-113(g)(5) provides the following as grounds for seeking termination:

The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against

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<sup>5</sup>The court made findings that the parents had failed to comply with the permanency plan or to improve or remove the conditions which led to removal, and there was no reason to believe they would comply given additional time. Because it is necessary for the court to find only one statutory ground for removal, we need not address the issues raised by the court's findings on this ground.

any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, which has been found under any prior order of a court or which is found by the court hearing the petition to be severe child abuse...

Tenn. Code Ann. § 36-1-113(g)(6) provides the following as grounds for seeking termination:

The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court.

The convictions of both Mother and Father were introduced into evidence and stipulated to by the parties at the hearing on the petition for termination. Mother admits that DCS established at least two grounds for termination of parental rights.

Father, Perry S., does not dispute his conviction and sentencing for sexual abuse of C.M.R. He argues, however, there was no proof of abuse or other harm to his own child, J.M.S. The statute includes abuse of another child in the home. He also asserts that the termination proceeding should have been continued pending disposition of his motion for a new trial in his criminal case. While he states that he is not asking this court to fashion a rule that requires termination proceedings to await the final conclusion of the appellate process, he argues that the rights of those “unjustly accused or hastily convicted” be preserved. We find this argument unavailing. Statutory grounds may be proved by evidence of conviction, and we find no basis for a requirement that a child remain ineligible for adoption and the possibility of a permanent home while her parent pursues reversal of the conviction. In addition, Mother’s testimony at the termination proceeding establishes the facts underlying the conviction, and that testimony was un rebutted.

It is clear that the grounds for termination, the convictions, were proved by clear and convincing evidence. We affirm the trial court’s finding that the statutory grounds in Tenn. Code Ann. §§ 36-1-113(g)(5) & 36-1-113(g)(6) exist.

#### IV. Termination of Parental Rights is in the Children’s Best Interest

Mother admits that DCS established at least two grounds for termination of parental rights. She asserts, however, that DCS failed to prove by clear and convincing evidence that termination of her parental rights was in the best interest of the children or that continuation of the parent-child relationship posed a substantial threat of harm to the children. Mother argues that she is of limited intellectual ability, was involved in the abuse of her daughter only as a result of fear based upon threats from Father, and is eligible for release from incarceration in 2002. She argues she had no opportunity to fulfill the requirements of the permanency plan while incarcerated and is willing to do whatever is necessary to prevent termination of her parental rights.

Termination of parental rights requires, in addition to grounds, a showing, by clear and convincing evidence, that the termination is in the best interest of the children. *See* Tenn. Code Ann. § 31-1-113(c)(2). “It is therefore beyond question that before a parent’s rights can be terminated, there must be a showing that the parent is unfit or that substantial harm to the child[ren] will result if parental rights are not terminated.” *Tennessee Baptist Children’s Home v. Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Courts are required to consider various factors, but are not limited to those factors, in determining whether termination of parental or guardianship rights is in the best interest of the children. Tenn. Code Ann. § 36-1-113(i). Among those statutorily enumerated factors is “whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child or another child or adult in the family or household.” Tenn. Code Ann. § 36-1-113 (i)(6). Also included is “whether the parent’s or guardian’s mental and/or emotional status would be detrimental to the child[ren] or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child[ren].” Tenn. Code Ann. § 36-1-113 (i)(8). The primary focus of the factors listed in the statute is the safety and welfare of the child.<sup>6</sup>

When it becomes obvious that children will not be able to safely return to a parent’s custody in a reasonable time frame, those children’s interests may indeed be best served by terminating the rights of the parent so that the children may be adopted into a stable and nurturing home. The General Assembly has determined that one of the primary purposes for our statutory system of child removal, foster care, and adoption is “to protect [children] from needless prolonged placement in foster care and the uncertainty it provides, and to provide them a reasonable assurance that, if an early return to the care of their parents is not possible, they will be placed in a permanent home at an early date.” Tenn. Code Ann. § 37-2-401(a). Our courts have recognized the significance of permanency as the goal of decisions involving future placement of children and termination of parental rights. *See, e.g., State Dept. of Human Servs. v. Smith*, 785 S.W.2d 336, 338 (Tenn. 1990). (The consequence of denying termination of parental rights of parents who were unfit due to mental illness would be “to condemn a child . . . to a life in serial foster homes without any possibility of a stable, permanent home.”); *State Dep’t. of Children’s Servs. v. Hunter*, No. 1999-02606-COA-R3-CV, 2000 WL 313549, at \*4 (Tenn. Ct. App. Mar. 29, 2000) (no Tenn. R. App. P. 11 application filed)(where continuation of the parent child relationship would eliminate any realistic possibility of children being integrated into stable and permanent home, termination is in best interest).

The legislature has also mandated that conflicts between the interest of a parent and that of a child should be resolved in favor of the child. Tenn. Code Ann. § 37-2-401(c). In this case, both Mother and Father are incarcerated for the severe abuse of one of the children who are the subject

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<sup>6</sup>For example, also included in the list are: (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct or conditions as to make it safe and in the child[ren]’s best interest to be in the home of the parent or guardian; (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child[ren]; and (5) The effect a change of caretakers and physical environment is likely to have on the child[ren]’s emotional, psychological, and medical condition. Tenn. Code Ann. §36-1-113(i).

of the petition. Their incarceration prevents them from parenting the children and/or providing the children with a permanent home. Mother is asking this court not only to let these children live in limbo until she is released from prison, but also to give her additional time after release from incarceration to comply with the permanency plan and establish a stable home. She argues on the one hand that her mental and emotional condition rendered her unable to prevent, or even resist taking part in, the harm her boyfriend inflicted upon her child, but also argues that she will in the future do whatever is necessary to get her children back. The trial court was unwilling to risk the children's well-being on such promises, and so are we.

Because of the abuse committed by Mother and Father, these children have already been in the custody of DCS since 1998. To do other than affirm the termination of parental rights would leave the children in foster care indefinitely, and we cannot agree that such arrangement is in the children's best interest. This is especially true since there is no evidence that Mother can provide a safe home where she will protect these children in the future.

Because continuation of the parental relationship would eliminate any realistic possibility of the children being integrated into a stable and permanent home, we find that termination of the parental rights of both Mother and Father is in the best interests of the children.

#### V. Conclusion

For the aforementioned reasons, the decision of the trial court terminating the parental rights of Tina S. and Perry S. is affirmed. Costs of this appeal are taxed equally between the Appellants, for which execution may issue if necessary.

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PATRICIA J. COTTRELL, JUDGE